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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

2-WAY COMPUTING, INC. a Nevada
corporation,

Plaintiff,

v.

SPRINT SOLUTIONS, INC., a Delaware
corporation; NEXTEL FINANCE COMPANY,
a Delaware corporation; SPRINT UNITED
MANAGEMENT COMPANY, a Kansas
corporation; NEXTEL OF CALIFORNIA, INC.,
a Delaware corporation; NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited
liability company, and NEXTEL
COMMUNICATIONS, INC., a Delaware
corporation,

Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**DEFENDANTS' UNOPPOSED
MOTION FOR LEAVE TO FILE
UNDER SEAL**

Pursuant to Local Rule 10-5 and Paragraph 9 of the Stipulated Protective Order, Dkt. 39, Defendants Sprint Solutions, Inc., Nextel Finance Company, Sprint United Management Company, Nextel of California, Inc., Nextel Boost of California, LLC, and Nextel Communications, Inc. (collectively, "Sprint") hereby request that portions of its Omnibus Motion *In Limine* and Exhibits B, C, D, E, F, G, H, and J thereto, which will be electronically filed under seal contemporaneously with this request, be sealed by this Honorable Court.. This Motion for Leave is based on the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument the Court may entertain. Additionally, counsel for Sprint has conferred with counsel for Plaintiff who indicated that the Plaintiff will not oppose the current Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 20, 2011, the Court entered the parties' Stipulated Protective Order. *See* Dkt. 39. On May 24, 2012, the Court entered a Stipulation for Amendment to Stipulated Protective Order. *See* Dkt. 99. The Stipulated Protective Order allowed for the production of documents and information that contain technical or business information of a competitive significance. Dkt. 39 at ¶6. The Stipulated Protective Order also protected non-parties that provided confidential documents and/or information in the case. *Id.* at ¶15. Under the protective order, the parties, as well as non-parties such as Motorola Mobility, Motorola Solutions, and Qualcomm, produced documents, provided information during discovery, and permitted the parties to produce information and documents subject to confidentiality restrictions. Much of this information was designated as "Confidential" in accordance with the provisions in the Stipulated Protective Order as the information involved proprietary technical information with respect to the iDEN technology at issue.

Previously in this matter, Sprint filed two Motions for Summary Judgment and replies in support of those Motions. Both of those Motions involved materials that either the parties, or non-parties, deemed "Confidential" under the Stipulated Protective Order, including materials concerning how iDEN, and devices that use iDEN, operate. Thus, under paragraph

1 9 of the Stipulated Protective Order, Sprint filed a motion to seal certain materials involved in
2 those Motions for Summary Judgment illustrating that “compelling reasons” existed for such
3 materials to remain under seal. *See* Dkts. 140, 156. The Court granted those Motions. *See*
4 Dkts. 157, 159. In granting those Motions to Seal, the Court found that “Defendants have
5 stated compelling reasons for maintaining the confidentiality of documents filed in
6 connection with their Motions for Summary Judgment.” Dkt. 157 at 2. *See also* Dkt. 159 at
7 1; Dkt. 212.

8 **II. LEGAL ARGUMENT AND ANALYSIS**

9 The documents filed under seal should remain sealed because they contain
10 confidential information and trade secrets regarding the technology at issue. In the case of
11 dispositive motions, in which similar, if not the same, materials were deemed to remain under
12 seal by this Court, *see* Dkts. 157, 159, “compelling reasons” must be shown in order to seal
13 the records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).
14 As described above, the Court found that the “compelling reasons” test was met to maintain
15 under seal documents relating to the iDEN technology at issue.

16 The information Sprint seeks to maintain under seal here meets the “compelling
17 reasons” test. Documents relating to the development and operation of iDEN are clearly
18 proprietary and subject to protection. Another district court, in conjunction with a theft of
19 trade secrets case involving documents concerning iDEN technology, made specific findings
20 of fact that the iDEN technology is proprietary and not readily available to the public. *See*
21 *U.S. v. Hanjuan Jin*, 833 F. Supp. 2d 977, 982, 991 (N.D. Ill. 2012) (“iDEN is a proprietary
22 standard for cellular telecommunications technology developed by Motorola [and] is not
23 publicly accessible.”). Maintaining the confidentiality of such technology is essential to not
24 only third parties that developed the technology such as Motorola Solutions and Motorola
25 Mobility, but also the companies that have contracted with these companies to use the
26 technology and have agreed to maintain its confidentiality, such as Sprint.¹ In fact, the Court
27

28 ¹ The agreements with these companies contain non-disclosure and confidentiality obligations.

1 filed its Order on the Motion for Summary Judgment involving the iDEN technology at issue
2 under seal. *See* Dkt. 160.

3 The redactions to Sprint's Omnibus Motion *In Limine* and certain Exhibits thereto
4 relate to (1) the functionality of the proprietary iDEN technology, how iDEN devices that use
5 such technology operate, and the development of the iDEN technology, and thus should be
6 maintained under seal, and (2) competitive financial information. The information has been
7 designated as "Confidential" under the Stipulated Protective Order because the producing
8 party considers the information to be proprietary and subject to protection. The Court's prior
9 orders with respect to the Motions to Seal in conjunction with the Motions for Summary
10 Judgment and previous motions *in limine*, *see, e.g.*, Dkt. 157, 159, 212, as well as the Order
11 from the Northern District of Illinois discussed above, illustrate that Sprint has made the
12 requisite particularized showing of good cause with respect to these documents.

13 Due to the confidential, proprietary, and private nature of these documents and
14 information, public disclosure could result in improper use and could put not only Defendant
15 Sprint, but also non-parties Motorola Mobility, LLC and Motorola Solutions, Inc. at a
16 competitive disadvantage in the marketplace. Furthermore, the public has little to no interest
17 in these documents and information in the context of this patent litigation matter brought by a
18 non-practicing entity. Considering the information at issue, there is comparatively little value
19 to the general public in terms of enhancing its "understanding of the judicial process." *See*
20 *Kamakana*, 447. F.3d at 1179. Simply put, there is no harm to the public if they do not have
21 access to the information Sprint seeks to seal. Therefore, this Court should enter an order to
22 seal the documents and information and not place it on the Court's docket.

23 **III. CONCLUSION**

24 Because Sprint's Omnibus Motion *In Limine* and certain Exhibits contains
25 confidential information and trade secrets regarding the technology used by Sprint for Push-
26 to-Talk that is at issue in this patent infringement lawsuit, and that Plaintiff does not oppose
27 the current Motion, Sprint respectfully requests that the Court enter an Order that these
28 materials remain sealed.

1 Dated: July 24, 2015

Respectfully submitted,

2 **KILPATRICK TOWNSEND &**
3 **STOCKTON LLP**

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Counsel for Defendants
*Sprint Solutions, Inc., Nextel Finance
Company, Sprint United Management
Company, Nextel of California, Inc., Nextel
Boost of California, LLC, and Nextel
Communications, Inc.*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE UNDER SEAL** by the method indicated:

<u>XXX</u>	by the Court's CM/ECF Program
_____	by U. S. Mail
_____	by Facsimile Transmission
_____	by Electronic Mail
_____	by Federal Express
_____	by Hand Delivery

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***Counsel for Plaintiff
2-Way Computing, Inc.***

DATED: July 24, 2015

s/Christopher Schenck
Christopher Schenck (*Pro Hac Vice*)

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AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' UNOPPOSED MOTION
 FOR LEAVE TO FILE UNDER SEAL**

1 The Court, having reviewed Defendants' Unopposed Motion for Leave to File Under Seal
2 and good cause appearing, hereby ORDERS that the following documents can be filed under seal:

- 3 1. The unredacted version of Defendants' Omnibus Motion *In Limine*; and
4 2. Exhibits B-H and J to the Declaration of Christopher Schenck in Support of
5 Defendants' Omnibus Motion *In Limine*.

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7 DATED this 19th day of August, 2015.

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9 THE HONORABLE PEGGY A. LEEN
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